

ORDINANCE NO. 54

AN ORDINANCE TO ADOPT BY REFERENCE THE UNIFORM TRAFFIC CODE

An Ordinance to adopt by reference the Uniform Traffic Code to provide for penalties for violations of said Ordinance and to repeal all conflicting Ordinances.

THE VILLAGE OF GRAND BEACH ORDAINS:

Section One. Uniform Traffic Code Adopted.

Pursuant to Public Act No. 62 of 1956 (MCL 257.951 et seq., MSA 9.2651 et seq.), as amended, the Uniform Traffic Code for Cities, Townships, and Villages promulgated by the director of state police is adopted by reference as the Village of Grand Beach Traffic Code and is made a part of this Ordinance as if fully set forth in this Ordinance, subject to the modifications contained in Section Two and subject to such further modifications as the village shall adopt by Ordinance from time to time. References to the governmental unit in the Uniform Traffic Code shall mean the Village of Grand Beach. Copies of the Uniform Traffic Code, as amended and supplemented, are available at the office of the village clerk, located at the village hall, for inspection by and distribution to the public during normal business hours.

Section Two. Modifications.

The following sections and subsections of the Uniform Traffic Code for Cities, Townships and Villages are amended as set forth in this section, and additional sections and subsections are added as indicated. Section numbers shall refer to the like-numbered sections in the Uniform Traffic Code.

Sec. 5.15. Operating while under influence of intoxicating liquor or controlled substance, or combination thereof or operating a motor vehicle while visibly impaired.

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the village, if either of the following applies:

(a) The person is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(b) The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within the village, by a person who is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or whose ability to operate the motor vehicle is visibly impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the village, when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1) of this section, a finding of guilty under this subsection may be rendered.

(4) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the

general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the village if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony.

(5) A person, whether licensed or not, shall not operate a vehicle in violation of subsection (4) of this section while another person who is less than 16 years of age is occupying the vehicle. If a person is convicted of violating this subsection (5), the following shall apply:

(a) The person is guilty of a misdemeanor, punishable by one or more of the following:

(i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment for not more than 93 days.

(b) In the Judgment of sentence under this section, the court may, unless the vehicle is ordered forfeited under MCL 257.625n, MSA 9.2325(14), order vehicle immobilization as provided in MCL 257.904d, MSA 9.2604(4).

(6) If a person is convicted of violating subsection (1) of this section, the

person is guilty of a misdemeanor, punishable by one or more of the following:

- (a) Community service for not more than 45 days
- (b) Imprisonment for not more than 93 days.
- (c) A fine of not less than \$100.00 or more than \$500.00.

(7) A person who is convicted of violating subsection (2) of this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a less than \$100.00 or more than \$500.00, or both.

(8) If a person is convicted of violating subsection (3) of this section, the person is guilty of a misdemeanor punishable by one or more of the following:

- (a) Community service for not more than 45 days.
- (b) Imprisonment for not more than 93 days.
- (c) A fine of not more than \$300.00.

(9) If a person is convicted of violating subsection (4) of this section, all of the following shall apply:

(a) Except as otherwise provided in subsection (9)(b) of this section, the person is guilty of a misdemeanor punishable by one or both of the following:

- (i) Community service for not more than 45 days.
- (ii) A fine of not more than \$250.00.

(b) If the violation occurs within seven years of one or more prior convictions, the person may be sentenced to one or more of the following:

- (i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment of not more than 93 days.

(10) In addition to imposing sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution, pursuant to the Code of Criminal Procedure, Public Act No. 175 of 1927, being MCL 760.1--776.22, MSA 28.841--28. 1274(3).

(11) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or the village as a result of the person's activities in that service.

(12) If a person is charged with a violation of subsection (1), (3) or (5) of this section, or of MCL 257.625m, MSA 9.2325(13), the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (4) of this section in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the motion of the prosecuting attorney.

(13) Except as otherwise provided in subsection (15) of this section, if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (1) of this section, the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of the violation.

(14) Except as otherwise provided in subsection (15) of this section, if a person is charged with operating a vehicle while his ability to operate the vehicle was visibly impaired due to his consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (3) of this section, the court shall

require the jury to return a special verdict in the form of a written finding or, if the court convicts the person with a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

(15) A special verdict described in subsections (13) and (14) of this section is not required if a jury is instructed to make a finding solely as to either of the following:

(a) Whether the defendant was under the influence of a controlled substance or of a combination of intoxicating liquor and controlled substance at the time of the violation.

(b) Whether the defendant was visibly impaired due to his consumption of a controlled substance or a combination of intoxicating liquor and controlled substance at the time of the violation.

(16) If a jury or court makes a finding under subsection (13), (14) or (15) of this section that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance and an intoxicating liquor, the court shall do both of the following:

(a) Report the finding to the secretary of state.

(b) Forward to the department of state police, on a form prescribed by the state court administrator, a record that specifies the penalties imposed by the court, including any term of imprisonment and any licensing sanction imposed under MCL 257.625n, MSA 9.2325(14) or MCL 257.904d, MSA 9.2604(4).

(17) Except as otherwise provided by law, a record described in subsection (16)(b) of this section is a public record, and the department of state police

shall retain the information contained on that report for a period of not less than seven years.

(18) In a prosecution for a violation of subsection (4) of this section, the defendant shall bear the burden of proving that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.

Sec. 5.15e. Confiscation by peace officer of accused's license upon refusal to take test or if test reveals impermissible blood alcohol content; issuance of temporary license; report to secretary of state; destruction of accused's license.

(1) If a person refuses a chemical test offered pursuant to MCL 257.625a(6), MSA 9.2325(1), (6) or section 5.15a(6) of the Uniform Traffic Code adopted by the village, or submits to a chemical test or a chemical test is performed pursuant to a court order, and the test reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall do all of the following:

(a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle, and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person. The temporary license or permit shall be on a form provided by the secretary of state.

(b) Except as provided in subsection (2) of this section, immediately do all of the following:

(i) Forward a copy of the written report of the person's refusal to submit to a chemical test to the secretary of state.

(ii) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.

(iii) Destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to MCL 257.625a(6), MSA 9.2325(1), (6) or section 5.15a(6) of the Uniform Traffic Code adopted by the village that requires an analysis of blood or urine and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) of this section pending receipt of the test report. If the report reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b) of this section. If the report does not reveal an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results and immediately return the person's license or permit by first class mail to the address given at the time of arrest.

(3) A temporary license or permit issued under this section is valid for one of the following time periods:

(a) If the case is not prosecuted, for 90 days after issuance or until the person's license or permit is suspended pursuant to MCL 257.625f, MSA 9.2325(6), whichever occurs earlier. The prosecuting attorney shall notify the secretary of state if a case referred to the prosecuting attorney is not prosecuted. The arresting law enforcement agency shall notify the secretary of state if a case is not referred to the prosecuting attorney for prosecution.

(b) If the case is prosecuted, until the criminal charges against the person are dismissed, the person is acquitted of those charges, or the person's license or permit is suspended, restricted or revoked.

(4) As used in this section, "unlawful alcohol content" means any of the following, as applicable:

(a) If the person tested is less than 21 years of age, 0.02

grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath or per 67 milliliters of urine.

(b) If the person tested was operating a commercial motor vehicle within the state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath or per 67 milliliters of urine.

(c) If the person tested is not a person described in subsection (a) or (b) of this section, 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath or per 67 milliliters of urine.

Sec. 5.62a. Operation of a motor vehicle by a person whose license is suspended, revoked or denied or who has never applied for a license.

(1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in MCL 257.212, MSA 9.1912 of that suspension or revocation, whose application for a license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles within the village.

(2) A person shall not knowingly permit a motor vehicle owned by such person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the village, by a person whose license or registration certificate is suspended or revoked, whose application for a license has been denied, or who has never applied for a license, except as permitted under this Code or the Michigan Vehicle Code.

(3) Except as otherwise provided in this section, a person who violates subsection (1) or (2) of this section is guilty of a misdemeanor punishable as follows:

For a first violation, by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.

(4) Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the driving record of the person from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's computer information network.

(5) This section shall not apply to a person who operates a vehicle solely for the purpose of protecting human life or property, if the life or property is endangered and summoning prompt aid is essential.

(6) A person whose vehicle group designation is suspended or revoked and who has been notified as provided in MCL 257.212, MSA 9.1912 of that suspension or revocation, or whose application for a vehicle group designation has been denied, as provided in the act, or who has never applied for a vehicle group designation, and who operates a commercial motor vehicle within the state, except as permitted under this Code or the Michigan Vehicle Code, while any of those conditions exist is guilty of a misdemeanor, punishable, except as otherwise provided in this section, by imprisonment for not less than three days or more than 93 days, or a fine of not more than \$100.00, or both.

Sec. 5.62b Order of impoundment

(7) For purposes of this section, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again.

(1) When a person is convicted under section 5.62a(1) of the Uniform Traffic Code adopted by the village, of operating a motor vehicle while his license to operate a motor vehicle is suspended, revoked or denied, the motor vehicle, if it is owned in whole or in part by that person, shall be

ordered impounded for not less than a period the court orders, but not more than 120 days from the date of the judgment.

(2) An order of impoundment issued pursuant to subsection (1) of this section is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vehicle to the storage for insurance coverage purposes.

(3) The owner of a motor vehicle impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vehicle whether or not the vehicle is returned to him. The vehicle shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vehicle is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vehicle, the vehicle shall be considered an abandoned vehicle and disposed of as provided in section 2.5a of the Uniform Traffic Code adopted by the village.

(4) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another person as owner who becomes subject to this act.

Sec. 5.62c. Confiscation of registration plate and issuance of a temporary vehicle registration plate.

(1) When a peace officer detains the driver of a motor vehicle for a violation of a law of this state or local ordinance for which vehicle immobilization is required, the peace officer shall do all of the following:

(a) Immediately confiscate the vehicle's registration plate and destroy it.

(b) Issue a temporary vehicle registration plate for the vehicle in the same form prescribed by the secretary of state for temporary registration plates issued under section MCL 257.226a, MSA 9.1926(1) or MCL 257.226b, MSA 9.1926(2).

(c) Place the temporary vehicle registration plate on the vehicle in the manner required by the secretary of state.

(d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was confiscated and destroyed, and a temporary plate was issued.

(2) A temporary vehicle registration plate issued under this section is valid until the charges against the person are dismissed, the person pleads guilty or nolo contendere to those charges, or the person is found guilty of or is acquitted of those charges.

Sec. 5. 62e. Immobilization of vehicles.

(1) A court shall order a vehicle immobilized under MCL 257.904d, MSA 9.2604(4) by the use of any available technology approved by the court that locks the ignition, wheels or steering of the vehicle, or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating section 5.15 of the Uniform Traffic Code or MCL 257.625, MSA 9.2325, or a suspension, revocation or denial under section 5.62a of the Uniform Traffic Code or MCL 257.904, MSA 9.2604 to pay the cost of immobilizing and storing the vehicle.

(2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under section 3(3)(a) of the Use Tax Act, 137 PA 94, MCL 205.93, MSA 7.555(3) without a court order.

(3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease or otherwise obtain a motor vehicle during this immobilization period.

(4) A person shall not remove, tamper with or bypass, or attempt to

remove, tamper with or bypass a device that he knows or has reason to know has been installed on a vehicle by court order by vehicle immobilization or operate or attempt to operate a vehicle that he knows or has reason to know has been ordered immobilized.

(5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(6) To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.

(7) If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.

(8) The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required.

Section Three. Conflicting Ordinances.

Ordinance #42 and any other or parts of Ordinances in conflict herewith are hereby repealed.

This ordinance shall take effect after the adoption and publication thereof.

ORDINANCE DECLARED ADOPTED.

CAROLE S. NAGY, Village Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the VILLAGE OF GRAND BEACH, County of Berrien, State of Michigan, at a Regular Meeting, held on August 16, 2001, and that said Meeting was conducted and public notice of said meeting was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that the Minutes of said meeting were kept and will be or have been made available as required by said Act.

CAROLE S. NAGY, Village Clerk